

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

MEETING OF THE  
UNDERGROUND STORAGE TANK POLICY COMMISSION

Phoenix, Arizona  
November 16, 2005  
9:00 a.m.

Location: 1110 W. Washington  
Room 250  
Phoenix, Arizona

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1 INDEX FOR THE AGENDA ITEMS

2

3 AGENDA ITEMS: PAGE

4	1. CALL TO ORDER AND ROLL CALL	4
5	2. APPROVAL OF MINUTES FROM AUGUST AND SEPTEMBER 2005 MEETINGS	4
6	3. DISCUSSION OF RULES AFFECTING THE UST PROGRAM	6
7	A. Draft Soil Remediation Levels (SRLs) Rule	7
7	B. Draft Special Waste Rule	7
8	C. Draft SVE General Air Permit Rule	9
8	4. ADEQ UPDATES	11
9	A. UST PROGRAM UPDATE and SAF UPDATE	13
9	B. UST CORRECTIVE ACTION MONTHLY UPDATE	15
10	C. RISK ASSESSMENT and TIER II MODELING UPDATE	15
11	5. FINANCIAL SUBCOMMITTEE UPDATE	23
12	6. TECHNICAL SUBCOMMITTEE UPDATE	25
13	7. SUMMARY OF MEETING ACTION ITEMS	42
14	8. DISCUSSION OF AGENDA ITEMS FOR NEXT COMMISSION MEETING	44
15	9. GENERAL CALL TO THE PUBLIC	34
16	10. ANNOUNCEMENTS	
17	11. ADJOURN	43

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1 COMMITTEE MEMBERS PRESENT:

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3 Gail Clement, Chairperson

4 Hal Gill, Vice-Chair

5 Philip McNeely

6 Michael O'Hara

7 Karen Gaylord, Esq.

8 Barbara Pashkowski, Esq.

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1 P R O C E E D I N G S

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3 CHAIRPERSON CLEMENT: This is our November 16th,  
4 2005 Underground Storage Tank Policy Commission. Welcome  
5 to the meeting, and if we could start with the roll call,  
6 Ms. Pashkowski.

7 MS. PASHKOWSKI: Barb Pashkowski with the  
8 Attorney General's Office.

9 MR. MC NEELY: Phil McNeely.

10 MR. O'HARA: Michael O'Hara.

11 MR. GILL: Hal Gill.

12 CHAIRPERSON CLEMENT: Gail Clement.

13 MS. GAYLORD: Karen Gaylord.

14 CHAIRPERSON CLEMENT: Thank you. Has everybody  
15 had a chance, received and reviewed the August and  
16 September 2005 meeting minutes?

17 MS. GAYLORD: Yes.

18 CHAIRPERSON CLEMENT: Okay. Were there any --  
19 your concerns were on the September or the August?

20 MS. GAYLORD: Both.

21 CHAIRPERSON CLEMENT: Is there a motion to  
22 approve the August 2005 meeting minutes? Any discussion?

23 MR. O'HARA: I move to approve it.

24 CHAIRPERSON CLEMENT: Is there a second?

25 MR. GILL: Second.

1           CHAIRPERSON CLEMENT: All in favor?

2           (Chorus of ayes.)

3           CHAIRPERSON CLEMENT: Anyone opposed?

4           Okay. Let's move to the September 2005 meeting  
5 minutes. I believe that Karen had a few corrections. Is  
6 that correct?

7           MS. GAYLORD: Yeah, just to my own testimony. On  
8 page 18, line 22, it reads, "Ms. Gaylord: I don't have a  
9 problem." In fact I said, "I have a problem," so the  
10 "don't" should be deleted.

11           On page 27, there is a reference to the State  
12 leave program, L-E-A-V-E. That should be Lead, L-E-A-D.  
13 That is on line 22.

14           Page 28, line 15 and line 20, again the word  
15 leave should be changed to Lead, L-E-A-D.

16           Page 32, there is on line 12, it currently reads  
17 "comment, maybe, is that these are," and then there is the  
18 word "documents". That should be changed to the word  
19 "comments".

20           Line 15, the last word is "we're" W-E-'-R-E, that  
21 should be "are we".

22           Line 23, the word "concerns" should not be  
23 plural.

24           Line -- I'm sorry. Page 43, this is the last  
25 one. Just on page -- on line 4, after the word

1 "statement", insert the words "of the".

2 CHAIRPERSON CLEMENT: And, Karen, if you would be  
3 so kind to give a copy of those pages to Al Johnson so we  
4 have it for the record in more detail. Thank you.

5 Any other comments or corrections to the meeting  
6 minutes from September?

7 Okay. Is there a motion to approve the meeting  
8 minutes with the changes identified by Karen -- Ms.  
9 Gaylord?

10 MR. O'HARA: I move we approve the minutes.

11 CHAIRPERSON CLEMENT: Is there a second?

12 MR. GILL: I second.

13 CHAIRPERSON CLEMENT: All in favor?

14 (Chorus of ayes.)

15 CHAIRPERSON CLEMENT: Anyone opposed?

16 Motion passes.

17 Our first agenda item is discussion of the rules  
18 affecting the UST program, and there is quite a bit going  
19 on right now, so if you'd give us a brief update, it would  
20 be helpful.

21 MR. MC NEELY: Okay. The rules affecting the UST  
22 program, you have A, B, C on there, and you don't have the  
23 SAF rules. I will just quickly say, we are all working on  
24 something for the SAF rules, and we're still going through  
25 the comments so we're working on that.

1 Under Item A, Draft Soil Remediation Levels Rule,  
2 we had a public meeting in Tucson and Phoenix in early  
3 November -- or early October, and we asked for comments by  
4 the end of October, and we are receiving -- we've been  
5 told we're going to receive three sets of comments, one  
6 from the homeowner's association or Home Builders  
7 Association of Arizona, one from the Chamber of Commerce  
8 and one from AAI. We haven't received them all yet, we've  
9 just received couple of them, so once we get those, we  
10 will evaluate the comments and see if we need to have any  
11 more meetings or proceed with writing the preamble and  
12 proposing the rule. And if we do propose the rule, it  
13 will probably be some time in January/February time frame,  
14 start the formal process.

15 The Draft Special Waste Rule, there was an  
16 informal meeting on November 4th, was the first meeting.  
17 They are accepting comments on that rule until November  
18 23rd, and I will just give you the contact. Mark  
19 Lewandowski is the contact. His phone number is 771-2230,  
20 and his e-mail is msl@azdeq.gov.

21 These rules will affect the UST in a special way,  
22 so it's fluff, auto shredder fluff, and PCS, Petroleum  
23 Contaminated Soil. And basically we're not changing the  
24 way we do things today. Some of the rules are being  
25 cleaned up, definitions are being cleaned up. The

1 concentrations are coming out, that's referring to the  
2 soil remediation levels.

3 I think some of our UST stakeholders went to the  
4 first meeting and there was some issue about clarity, and  
5 it looked like if you don't remove the soil from the UST  
6 site, it is not -- the PCS does not apply, and their  
7 comments were to try to clarify that definition. As long  
8 as it stays on site, these rules don't apply.

9 CHAIRPERSON CLEMENT: When you say "stays on  
10 site," does that mean, for example, you are not  
11 regenerating it, it stays in place, or does it just stay  
12 on site?

13 MR. MC NEELY: On site. If it's in place, it  
14 doesn't apply.

15 CHAIRPERSON CLEMENT: Right.

16 MR. MC NEELY: If you dig it out and put it on  
17 the facility, it still doesn't apply as long as you do a  
18 remediation in accordance with the corrective action  
19 rules.

20 Once you remove it off-site, then the PCS rules  
21 take effect, and you have to take it to an appropriate  
22 landfill and use the documentation. So that's an informal  
23 process, and it should be on our website if there is any  
24 meetings, any additional meetings.

25 CHAIRPERSON CLEMENT: So you are just at the



1 informal process for these; right?

2 MR. MC NEELY: Right. And the next meeting would  
3 be the week of December 5th.

4 CHAIRPERSON CLEMENT: Okay. Mr. Gill?

5 MR. GILL: Phil, I understood that there was some  
6 language in there exempting UST. Is that taken out of  
7 there?

8 MR. MC NEELY: No. It exempts UST as long as the  
9 soil does not leave the facility. If it leaves the  
10 facility, then you have to take it to the appropriate  
11 landfill, then it does apply.

12 That's the same way it is now. I think that was  
13 the issue. I think somebody mistakenly thought we were  
14 adding a requirement or not exempting it. It's the same  
15 as it is now. It's the wording that's been changed a  
16 little bit.

17 The next one, the Draft SVE General Air Permit  
18 Rule, this one will affect SVE systems at our cleanups.  
19 There are quite a few stakeholders that are attending that  
20 that are UST stakeholders.

21 Actually, let me look at a list real quick.

22 Blazer Environmental has been attending. Tierra  
23 Dynamic's been attending, Meadowbrook's, in addition to  
24 other people. So, we do have a UST stakeholder presence  
25 there.

1           What they're doing is they're adding carbon to  
2 the general permit, so now you can use carbon. They're  
3 adding TC and TCE, which I think we need to take a hard  
4 look at, because I'd like to make sure that one's a TCA, a  
5 petroleum constituents in that list, so we should look at  
6 that.

7           Also they're adding -- let me pull this out.  
8 They're adding a couple or more requirements. Some of the  
9 requirements that aren't in there right now, they're  
10 talking about pounds per year that you can actually pull  
11 out and pounds per day or pounds per hour, so currently we  
12 don't have that in the permit.

13           CHAIRPERSON CLEMENT: Do you have to estimate or  
14 calculate, is that what the new requirement would be?

15           MR. MC NEELY: Right.

16           CHAIRPERSON CLEMENT: You don't have -- okay.

17           MR. MC NEELY: And this is still the informal  
18 process. I'm looking for my notes on this one. Oh, yeah,  
19 it's .55 pounds per hour for Benzene and 67 pounds per  
20 year. Right now that's not a requirement, but the cost is  
21 the same. The fees would be the same.

22           MR. GILL: That's going up a little bit, 2200 or  
23 something like that.

24           MR. MC NEELY: I will keep you informed on that  
25 the next time. Hal, I will do a good review of those and

1 get a report out in January of the process. And all of  
2 our meetings are on there, our UST -- not on the UST  
3 website, the ADEQ website. This is air quality with these  
4 rules.

5 So that's it for Item No. 3, the rules.

6 CHAIRPERSON CLEMENT: And I didn't put the SAF  
7 rules on because I wasn't sure where you were in the  
8 process. I know you are reviewing the comments and  
9 preparing the response of the summary.

10 When do you think you will have the next step of  
11 the process complete?

12 MR. MC NEELY: If we propose them, it could be  
13 early to mid December, I'd say.

14 CHAIRPERSON CLEMENT: Thank you.

15 MR. MC NEELY: Okay.

16 CHAIRPERSON CLEMENT: Any other questions or  
17 comments? Let's jump to the ADEQ Updates and you're  
18 number one, Mr. McNeely.

19 MR. MC NEELY: The ADEQ Updates. The UST  
20 program. Currently the division is on two different  
21 floors. We have Joe's and Ron's group, the Corrective  
22 Action Section and Compliance Section on the 4th floor,  
23 and the SAF Section, and I'm on the 6th floor, so we're  
24 separated.

25 What we're trying to do is move all down to the

1 4th floor, be in the same proximity to each other, and I  
2 think we're trying to do that by the end of the year,  
3 December 31st.

4           The purpose of that will be consistency. Right  
5 now our claim review, our technical staff are up on the  
6 6th floor. There is very little contact with the 4th  
7 floor. They communicate, but still when you're two floors  
8 away, you don't get that. So what we are going to do is  
9 put all of the technical people side by side, unit  
10 managers pretty much side by side, and we're hoping that  
11 just doing that alone will help with the consistency  
12 issue. If you have people sitting in cubicles next to  
13 each other, I think it would be more of a teamwork and  
14 more of the issues that Hal has with the Technical  
15 Subcommittee about consistency, I think we will go a long  
16 way doing that.

17           We've also hired Wayne Pudney. He was in SAF a  
18 while back and he was a state lead for about six or seven  
19 years. He's a registered geologist. He's working for  
20 WQARF right now, but he's going to come next week and take  
21 Tara Rosie's position, because Tara has been doing Judy's  
22 job and her own job for the last three months. So now she  
23 will have an RG, a person to help her through senior  
24 review, to help with the appeals and to help with the  
25 consistency issue also, that will free Tara up.

1           CHAIRPERSON CLEMENT: That's a really good idea.

2           MR. MC NEELY: We're happy to have him.

3           The SAF Update, you can look at your handouts.

4 For October 2005, you see we've done pretty well the last  
5 couple of months.

6           August we had 53 determinations, and we had 63 in  
7 the door. That was while we were working on the database.  
8 In September, we were still actually working on the  
9 database trying to get the bugs out.

10           But we reviewed 102 interim determinations and  
11 received 42.

12           In October, we reviewed 97, and we received 41,  
13 so we've been knocking down the backlog pretty quickly.  
14 Those numbers will increase significantly, because there  
15 is about 300 claims that were on formal appeal for  
16 eligibility, and we think we're going to have that  
17 settled, so those 300 claims will come in the door soon so  
18 we will have a big surge of applications to review.

19           CHAIRPERSON CLEMENT: Wasn't the 414, didn't  
20 those have some of those 300 claims?

21           MR. MC NEELY: They were not included.

22           CHAIRPERSON CLEMENT: Oh, okay. That was a  
23 completely separate --

24           MR. MC NEELY: Because we denied them. They were  
25 informal.

1           CHAIRPERSON CLEMENT:   Okay.

2           MR. MC NEELY:   But we're making good progress.

3   I think with Wayne coming, it will continue.

4           And there is some good news, too, in terms of  
5   appeals.   If you want to flip to page 3 back to SAF  
6   appeals, you can look at the trend.   In August, we had 48  
7   appeals, September, 21 and October, 7, which is very  
8   impressive considering in September we reviewed 103  
9   interim determinations.   You would expect that to go up,  
10   but it's dropped.

11           Informal determinations, in October, we made 47  
12   informal appeal determinations, which is 40 more than we  
13   got in.   That's a good trend.

14           On the formal appeal requests received, we had 6  
15   in October, and made 73 determinations in October.

16           CHAIRPERSON CLEMENT:   Good.

17           MR. MC NEELY:   So we're knocking off the backlog,  
18   our database is working better.   I think SAF is coming,  
19   working fairly smoothly.

20           CHAIRPERSON CLEMENT:   What do you attribute that  
21   to?

22           MR. MC NEELY:   Well, we have -- that's a good  
23   question.   I don't know.   We are communicating quite a  
24   bit.   Tara's in there, she's digging in, so --

25           CHAIRPERSON CLEMENT:   She's working 20 hours a

1 day, I think.

2 MR. MC NEELY: Tara's a hard worker, and she's  
3 technical so she understands all the issues.

4 CHAIRPERSON CLEMENT: Good.

5 MR. MC NEELY: That's all I have for the update.

6 CHAIRPERSON CLEMENT: Any questions or comments  
7 of Mr. McNeely?

8 Thank you, Mr. McNeely.

9 MR. MC NEELY: You are welcome.

10 CHAIRPERSON CLEMENT: Let's move on to the Risk  
11 Assessment and Tier II Modeling Update.

12 MR. DROSENDAHL: Yeah. My name is Joe  
13 Drosendahl. I'm the manager of the Corrective Action  
14 Section.

15 You don't have any numbers from the Corrective  
16 Action Section. We're hoping that the next meeting our  
17 database will have reporting capabilities. We're working  
18 real hard on that, both for giving numbers externally and  
19 internally also.

20 So I'm just -- other kind of updates, the  
21 Municipal Tank Closure Program, as of the 15th of this  
22 month, 21 cities and counties have made applications, and  
23 88 USTs have been permanently closed.

24 Update on the Route 66, there was a meeting up in  
25 Holbrook, between the City of Holbrook, City of Winslow,

1 and the county with EPA and DEQ regarding helping that  
2 area re-develop their properties. The EPA is trying to  
3 offer assistance to the cities and the counties along  
4 Route 66 to, you know, actually redevelop these areas.

5           They just had one meeting to kind of find out  
6 more information. There is going to be a larger meeting  
7 in January where they're going to invite other development  
8 groups in that area, property owners, to talk further  
9 about what is available to help these communities  
10 redevelop to help them out.

11           We're still continuing to convert into case  
12 management. We're in the process of going through some of  
13 the high priority sites to make sure that they are, you  
14 know, appropriate to be case-managed, so you should see,  
15 you know, managers assigned to these sites soon.

16           The Tier 2 software, we're continuing to work out  
17 the final bugs in it. And, once again, if anybody has any  
18 questions, problems with it, please e-mail Jeanene. She  
19 hasn't really been getting that many, and I'm sure they're  
20 out there, so just e-mail her.

21           Al Johnson is continuing to lead up the LUST case  
22 closure project, and we're getting down to the end of the  
23 really low hanging fruit. I think we're going to move on  
24 to the mid level fruit while we still have money in the  
25 contract. But so far it's been very beneficial.



1           Let's see. Kailash Bhatt, one of our unit  
2 managers, he went back to India for like two months, so,  
3 if anyone needs to contact that unit, David Burchard of  
4 that unit is acting for KB, so just contact David  
5 Burchard.

6           And I think that's my update.

7           Any questions?

8           Yes, Hal?

9           MR. GILL: I still have questions that -- I've  
10 been sending comments and questions to Jeanene and haven't  
11 heard any -- really got a response, and I just don't know  
12 what -- I would really like the department to let everyone  
13 know what they're going to do with the issues with the --  
14 running the program on anything other than 2000 Excel,  
15 because I can't run it on 2002 and 2003 Excel. It will  
16 not work. I can't save it, and I'm not sure that it's --  
17 I guess the problem is, I'm not even sure if it's working,  
18 because it will run. I will try to figure out a way to  
19 save it, and if I get it saved, I don't know that I can  
20 trust what is coming out, so that's why I'm concerned.  
21 2000, it will run, but I just don't understand why it was  
22 developed on '97 Excel.

23           MR. DROSENDAHL: Right. Okay.

24           MR. GILL: And I'm just really concerned, you  
25 know, because I'm putting my name and other people are

1 doing it, we're putting our names saying there is no risk  
2 at the site. And some of the results I see coming out, I  
3 don't know if I trust them. I don't know if it's working  
4 right in the model, because there is nothing, you know --  
5 it's a black box, like all models, so you don't know what  
6 it's actually doing.

7 MR. DROSENDAHL: Right.

8 MR. GILL: And also, any idea of how soon before  
9 we get the How To Tier 2 document? Because to really  
10 write a good report, you need that document to see how  
11 certain components in the program are working so you can  
12 say this is what's happening and that's what my  
13 understanding is is it's supposed to be in that document.

14 MR. DROSENDAHL: Okay.

15 CHAIRPERSON CLEMENT: Just to follow up on what  
16 Mr. Gill was talking about, the Excel spreadsheet that is  
17 the standard for the software is a 1997 Excel version?  
18 Most people probably don't even have that anymore. Can  
19 that be downloaded for free from a website? How do you  
20 get it?

21 MR. GILL: You can buy it on E-Bay. I'm thinking  
22 about getting it.

23 MR. DROSENDAHL: I know that we know that's a  
24 problem, and I will try to find out something real  
25 specific on how you can get around that --

1           CHAIRPERSON CLEMENT: Yeah, exactly.

2           MR. DROSENDAHL: -- or what we're going to do to  
3 get a newer version.

4           CHAIRPERSON CLEMENT: Yeah, because, I mean,  
5 there is two options. Everybody has to go back to '97 so  
6 that the software works properly, or DEQ's got to somehow  
7 manage to convert the Excel spreadsheet to a more  
8 available and recent model.

9           DR. DROSENDAHL: Okay.

10          MR. GILL: I've asked Jeanene earlier if the --  
11 based on the new SRL, the new EPA data that's out there,  
12 if that new data was in the offing, and, granted, DEQ  
13 can't require, you know, owner/operators to close their  
14 site based on the new SRL numbers, which aren't even in  
15 place yet, I understand that. But seeings how I know, and  
16 most of Arizona now knows, as far as consultants, that the  
17 EPA has new toxicological data and it's going to affect  
18 the new SRL. I have to put that in the model. I mean, I  
19 can't put old data in the model because I know it's out  
20 there. So, for a risk assessment, I have to use the new  
21 data.

22          And so I thought -- and I haven't had a response  
23 from Jeanene. I had asked her once before, and I thought  
24 she told me that it was in there. But the problem I have  
25 is that in running some of this new data through, I had

1 some constituents that had levels above the new SRLs, not  
2 above the old SRLs. It will pass the Tier 1 because it  
3 has the old numbers. That's not a problem. I went right  
4 on in -- I assume I went ahead and put the data into the  
5 Tier 2 part of the model, and -- but then when I looked at  
6 the handout -- and then it gave me a final saying no risk,  
7 but then when I looked at all the handouts, I can't -- it  
8 doesn't look like it evaluated those constituents, so I  
9 don't know if because it passed the Tier 1 has it not  
10 evaluated further on, because it had an A in all the  
11 columns.

12 MR. DROSENDAHL: Sure.

13 MR. GILL: And for benzene, it had some numbers  
14 in there, so --

15 MR. DROSENDAHL: I think -- you know, I'm  
16 definitely no risk person, but I think that if chemicals  
17 pass the Tier 1, those aren't carried forward into the  
18 Tier 2.

19 MR. GILL: See, that's what I was thinking, and  
20 that's a real problem. If there is knowledge that there  
21 is new numbers coming forward and there is new  
22 toxicological data, you have to put that in a model. You  
23 can't base it on old toxicological data, and so, you know,  
24 I've got a report that's saying it's clean, and I have got  
25 concentrations at 3 and 5 feet, that I see that as a

1 potential risk for construction workers and it's coming  
2 out as no risk.

3 MR. DROSENDAHL: But I guess that's always going  
4 to be a problem because they're always going to be  
5 updating toxicological data on a yearly basis, but I will  
6 have Jeanene respond back to you.

7 CHAIRPERSON CLEMENT: How is that going to be  
8 managed? What is DEQ's position if -- I understand that  
9 consultants and owners and operators are concerned about  
10 their own risk, but I want to separate that issue from  
11 what would be acceptable to DEQ at this juncture if a  
12 consultant were, or an owner/operator were to use this  
13 software package as it's currently designed, and it came  
14 up with no further action required, would that be an  
15 acceptable outcome even though the toxicological data  
16 behind it may not be the most current?

17 MR. MC NEELY: I will answer that. The BTEX  
18 really didn't change. The tox data did not change that  
19 much for the Benzene. It was the trimethylbenzene,  
20 actually. Currently we don't have a standard for that in  
21 the SRL, but we are going to have a standard for that in  
22 the new rule package. I believe those tox numbers are in  
23 the rules, are in the software.

24 MR. GILL: That's what I thought Jeanene told me,  
25 because naphthalene is what I have problems with, and it's

1 a big difference from 2600 to 51.

2 MR. MC NEELY: I don't know that. I will have to  
3 look, but I think they were using the updated numbers  
4 because we have constituents that didn't even have the  
5 numbers in the past, so that tells me she was using the  
6 updated numbers for that. I will have to check on that.

7 CHAIRPERSON CLEMENT: If we could -- that seems  
8 like a pretty large issue to clarify in terms of just  
9 risk, and never mind, you know, agency approvals, but that  
10 would be very helpful. I mean, I don't think we will have  
11 a December meeting, but in January maybe even having  
12 Jeanene back to answer these detailed questions.

13 MR. GILL: And I will have the risk assessment  
14 into her before. She had asked if I could send in a CD so  
15 that she could look at the input data and see what I am  
16 talking about, and I will do that as well and she will be  
17 able to respond specifically to that.

18 MR. MC NEELY: And maybe we could have a  
19 Technical Subcommittee meeting, actually set up a computer  
20 and run it there. I think that would be a better place to  
21 do it than just walk through it and figure out what the  
22 issues are.

23 MR. GILL: I've gotten answers to most of the  
24 questions that I asked her and the issues that I was  
25 having with the model, and I understand what I was doing

1 wrong or how to do it. But I don't think everybody has  
2 had that opportunity, so that will be helpful.

3 CHAIRPERSON CLEMENT: That would be a very good  
4 opportunity if we could set something like that up. Okay.

5 Any other questions or comments for Mr.  
6 Drosendahl on any of these issues?

7 Thank you, DEQ.

8 I'm going to just give a very brief  
9 Financial Subcommittee update because there was no  
10 Financial Subcommittee meeting to report out of.

11 There is, though, however, one activity that is  
12 coming to fruition, and the trifold brochure that Andrea  
13 Martincic was working on with primarily Ron Kern at DEQ is  
14 now being formatted for publication, and that's going to  
15 be a handout given out during inspections, at other  
16 opportunities for the agency to remind people about their  
17 financial assurance requirements, and Andrea helped put in  
18 a couple of bullet points about how to shop for insurance.  
19 And I know that she's very interested in making sure there  
20 is enough of these available for her membership, and  
21 obviously for anyone else who has a client or stakeholder  
22 that would be interested.

23 So, good job. When do you think that will be  
24 published?

25 MR. MC NEELY: It could be any day.

1           CHAIRPERSON CLEMENT: Any day?

2           MR. MC NEELY: I've seen the final and it's going  
3 up to the communications office for final approval.

4           CHAIRPERSON CLEMENT: Great. Great. I think  
5 hopefully that's going to be a good tool to the agency for  
6 the owners and operators.

7           Okay. The next update -- anything else on  
8 Financial Subcommittee? We will have to respond -- the  
9 Financial Subcommittee will -- let me back up.

10          The Director had asked the Policy Commission to  
11 do some evaluation on the status of insurance available to  
12 owners and operators, and we have yet to respond formally  
13 to the Director, so probably the beginning of next year  
14 we'll draft a letter. The bottom line is, we have not  
15 uncovered any current large problems with insurance  
16 acquisition, however, we anticipate there may be more in  
17 the future.

18          And, Michael, I know you are real involved in  
19 this issue, so your input is going to be real helpful to  
20 that letter, also.

21          And, Karen, I know you've been working on it  
22 also, but we will draft a response probably in January for  
23 the Commission's approval.

24          And then the next agenda item, we're on to the  
25 Technical Subcommittee update with Mr. Hal Gill.



1           MR. GILL: We had a meeting last Wednesday, and  
2 -- and what I've -- what I was trying to do, and I've  
3 mentioned this a number of times in the Policy Commission  
4 meetings, is that we wanted to go through, chronologically  
5 through a remediation process from any additional sampling  
6 through permitting, through system installation, O and M  
7 of the system, and then closure.

8           We wanted to have meetings to go through these  
9 issues to bring out all the different issues that come up  
10 on varying sites, because they are -- in most cases they  
11 are site specific, but permitting is permitting, and there  
12 are many issues and components that are site specific, and  
13 then there are also many components and issues that are  
14 pretty much the same for each site, depending on where you  
15 are in the state.

16           But the main purpose of this was to educate both  
17 sides of the table, DEQ, on the problems that the  
18 consultants and the owner/operators are having and the  
19 consultants and owner/operators on what kind of  
20 documentation DEQ needs from the owner/operators and the  
21 consultants for reimbursement and trying to allay denials  
22 so we don't have to go into appeals.

23           And so we -- this was the second meeting. It  
24 took us a while to get into these meetings because of the  
25 rule package that we were looking at, but this was the

1 second meeting on that. It was primarily a testing, a  
2 pilot testing, different types of pilot testing before and  
3 up through the CAP, and then we were going into  
4 permitting.

5 I was disappointed that -- Al and Joe are always  
6 there. They are always real attentive, they always have  
7 good comments, but I was disappointed that SAF people  
8 weren't there, because myself and all the consultants  
9 involved believe that the SAF needs to hear what the  
10 issues are out there so they can let us know what they  
11 need for documentation.

12 But there was no SAF personnel. There were ten  
13 consultants, Theresa was there and Al and Joe. As a  
14 matter of fact, I even sent out e-mails to a number of  
15 different -- I sent it out to my list of consultants, but  
16 I even sent out to individual consultants asking if they  
17 could please be there so we'd have a good turnout so we  
18 could have a good discussion, because I really wanted to  
19 hear examples of problems that they were having with  
20 permitting in different cities, counties, state and  
21 federal, and they're really different across the state.  
22 Every county does it different, every city does it  
23 different, and I asked them to provide costs and time  
24 frames so the DEQ could see, this is what you're seeing  
25 coming in, this is why you see \$15,000 for a permit, you

1 know, and things like that.

2           So, I was really hoping that SAF could hear this  
3 and we could come up with a matrix or something like that  
4 so we could -- we could use that as a worksheet for not  
5 only consultants, but DEQ SAF when they are reviewing  
6 these so they can compare city by city, county by county  
7 to come up with reasons for the costs that they are  
8 seeing.

9           And that was the idea, but unfortunately, the SAF  
10 personnel were not there, so we were basically talking to  
11 the choir, because Al and Joe have heard this, although  
12 the permitting stuff was brand-new. I mean, we wanted --  
13 a lot this -- because I'm not doing this anymore myself, a  
14 lot of this was new to me, too, and a lot of changes have  
15 occurred from when I was doing permitting, so it was real  
16 important to hear this, and I think we had some real good  
17 information.

18           So -- but, unfortunately, you know, I believe  
19 that SAF has to be there to hear this. I mean, it may be  
20 with the new way that they're planning on doing things  
21 with the technical personnel altogether, maybe some of the  
22 information will get passed on, but I just have concerns  
23 because that's what we've been asking for for the last  
24 umpteen years is Al and Joe hear it, and we ask them to  
25 pass it on and, you know, I haven't seen any real great

1 strides forward doing it that way. But, you know, maybe  
2 it will work better this time.

3 But anyway, that was -- it was a really good  
4 meeting. We got some real good input, and one consultant  
5 provided a list of the -- for the cities and the counties  
6 that they work in, the issues that I was asking for, the  
7 examples of time frame and example of the range of costs.

8 I've asked the consultants to send me additions  
9 to that list for other -- you know, cities that they are  
10 working on and counties that are not on that list so we  
11 can get a full range of the requirements for the different  
12 cities and counties and state and federal permits.

13 So, I guess that's, you know -- that's my update.

14 CHAIRPERSON CLEMENT: Can I ask a couple of quick  
15 clarifying questions? Is the larger issue that you are  
16 dealing with the fact that there is so much variability  
17 between jurisdiction and type of permit, and yet  
18 apparently DEQ is not sensitive to the fact that, because  
19 of that variability and some of the difficulties, that the  
20 costs are not being paid, is it related to costs, is it  
21 related to -- you know, what's the bottom line issue?

22 MR. GILL: I think it's always related to costs.  
23 That's the bottom line, but there is a lot of variability  
24 in the different types of permits, whether it's a state or  
25 county or a city. I guess the -- a simple example is just

1 permitting a system on a site. You have to get the city  
2 permits for electric and for gas, and it has to be  
3 green-tagged before you can move on and start your system.

4           And the inspectors come out, and the thing is,  
5 your system has to be there and hooked up to get those  
6 permits. Well, have you no control over how long it takes  
7 them to show up. And when I was permitting systems  
8 myself, and it's been 3, 4, 5 years ago now, we would, you  
9 know, jump through every hoop you can to put your system  
10 on there, get it all hooked up, all the piping connected  
11 and everything, and then you are working at the same time.  
12 You don't wait at that point now and call the city. You  
13 work with them and say, I'm planning on having this done,  
14 and you try to work with their schedules, but you have no  
15 control when they are going to show up.

16           And my understanding is that has increased  
17 drastically from when I was doing it. It's just like the  
18 cable guy, you have you no control over when they are  
19 going to show up. They say we are going to be there in  
20 this range of time and they may not show up at all.

21           And so it sits there and you are paying rent on  
22 that unit, and it can be weeks to months before you've got  
23 all your permitting done and the system has not started  
24 yet, so that's a huge issue.

25           CHAIRPERSON CLEMENT: And that issue is, then,

1 that SAF is reluctant or has not been paying for the down  
2 time as you're -- for the rental costs as you are waiting  
3 for the permit to be put in place? Is that the bottom  
4 line or not?

5 MR. GILL: Yeah, that's the bottom line. I don't  
6 know that they are not paying for all of it because it's  
7 different on different sites, and I don't do them anymore.  
8 But that's what I've heard people complaining about, and  
9 that's just one example.

10 MR. MC NEELY: Can I respond?

11 CHAIRPERSON CLEMENT: Yes, Mr. McNeely.

12 MR. MC NEELY: The process about it not getting  
13 down and SAF has to hear these issues, Joe represents the  
14 technical portion of the division. Joe reviewed the  
15 agenda you had with me and Tara Rosie, even before the  
16 meeting. After the meeting, he gave us the handouts and  
17 he talked to us about the meeting. I thought it was a  
18 good handout and it has all the different permits. I  
19 think that's a right path, and if you could tell us all  
20 the different issues, we will give those to the claims  
21 reviewers and post them on a little bulletin board so that  
22 when they are reviewing applications, they will have it in  
23 front of them, but it's site specific. If have you to  
24 leave a system on site two months to get inspected, you  
25 say what documentation is required that is site specific

1 to show, tell the story, and if it's reasonable, it gets  
2 paid. If it's five months and there's no reason -- what's  
3 the reason, we deny it. It's doesn't matter what county  
4 or what city, it's the same. So you just got to document  
5 it and tell the story and we will pay. We're not here not  
6 to pay.

7 So our claims reviewers, Chris, Tara, we're all  
8 very aware of it that you can't put the system on and  
9 start up the next day. We know that.

10 And last week was an issue because we had some  
11 illnesses and the flu's going around, couldn't send  
12 anybody. But really the intention is to have my claims  
13 review people reviewing claims and working, not attending  
14 meetings if I can help it.

15 I would like Joe to be the technical contact for  
16 the division. Ron will do all the financial  
17 responsibility, and I will go periodically when I have  
18 time, but I'd like the claims review people to review  
19 claims. And if Joe says it's good to pay, because that's  
20 where we're going, we should be very consistent and pay  
21 it, and we will be sitting right next to these guys.

22 CHAIRPERSON CLEMENT: You know, I don't think we  
23 can tell you who needs to participate in a particular  
24 meeting, but we have heard this complaint repeatedly that,  
25 you know, that SAF seems to be disconnected from, you

1 know, the rest of the program, and that people are getting  
2 good technical responses in the corrective action portion  
3 of the program, but then there is a disconnect once the  
4 payment comes through and the technical analysis of what  
5 should and shouldn't be paid. And at least since I've  
6 been back involved in the program, that's been an ongoing  
7 complaint.

8 I don't think we can sit here and say you must  
9 bring a SAF person to the technical meetings. However you  
10 want to manage that communication is obviously the  
11 Department's issue, but we just encourage you that if it  
12 would be helpful -- you know, Tara does have a technical  
13 background, so you're not -- you know, there is not that  
14 big gap, but if it would be helpful to send somebody to  
15 the SAF so that the communication improves and that these  
16 bottlenecks don't continue to happen, I think it would be  
17 a good idea.

18 Again, we can't tell you who needs to be at a  
19 particular meeting. If you think it's going to be managed  
20 with Joe's participation and that communication is going  
21 to get through, you know, we're going to watch him and see  
22 how well that works, but we do encourage you. You know, I  
23 know you are short staffed in SAF. I know you've got a  
24 lot of work, but if you can sometimes have somebody go to  
25 a productive meeting and learn a bunch and communicate



1 that and then save, you know, a world of problems later,  
2 that can be cost effective in time, so that's my two cents  
3 on that.

4 Any other comments? I mean, I know how hard Mr.  
5 Gill works in these meetings and how much he tries to pull  
6 together, and I just also want to thank him for the level  
7 of effort he continues to put out.

8 MR. GILL: I guess the one comment that I got  
9 when I talked to consultants before setting up these  
10 meetings is that they -- this is -- like I said, there was  
11 ten consultants. That's the most that I've ever had in a  
12 meeting that wasn't involved in a SAF Rule or Corrective  
13 Action Rule or something like that.

14 And as I said, I went out specifically and asked  
15 some of them to come. And -- but they're expending a lot  
16 of their time that they could be doing something else as  
17 well, and I will have to contact the consultants to see if  
18 they are interested in continuing with these meetings  
19 because, as I said, all the ones I've talked to feel  
20 strongly that the SAF people need to be there, because I  
21 don't think they have the experience that Joe has and Al  
22 has.

23 And just like, you know, through the years we've  
24 all become, you know -- DEQ and consultants have become  
25 somewhat experts on site characterization because we've

1 been doing that. The remediations are relatively new. We  
2 are getting into -- everybody is getting into remediations  
3 now where that has just started in the last two to three  
4 years to where that's primarily what you are seeing going  
5 through DEQ and SAF.

6           And I know Phil had a concern, and I, in my  
7 e-mails that I sent out about these meetings, I made it  
8 really clear that this was not a bash DEQ meeting. I  
9 wanted them to hear issues and I wanted them to be able to  
10 respond as far as, well, this is the kind of documentation  
11 we would like for something like that. And I said that in  
12 every e-mail I sent out. I said that in every meeting  
13 that it would be my job to make sure that I stop people  
14 short if they're trying to -- if it's just complaining.

15           I want -- we've got to get something out of this  
16 because we've been having these meetings -- what was it I  
17 said in the last Policy Commission, I think -- since the  
18 '80s, the same meeting, Joe and I were there, and with the  
19 same issues. And so we don't want or have the time to go  
20 to these meetings to discuss the same issues again. We  
21 need to accomplish something, and that's what the  
22 consultants when I ask them about these types of meetings,  
23 that's what they ask, well, can we accomplish anything;  
24 otherwise, they're not really interested. They've got  
25 other things to do.

1           And so I will have to find out if we're going to  
2 continue with these meetings or not by asking the  
3 consultants.

4           I guess the only other thing that is on any of  
5 the special rules that are out, if there is any other  
6 things that we need to look at in the subcommittee, I  
7 would need to know that. I don't know if there is  
8 anything else.

9           CHAIRPERSON CLEMENT: Good.

10          MR. GILL: That's it.

11          CHAIRPERSON CLEMENT: We will be there in just a  
12 second.

13          I can go ahead and take -- is there any other  
14 discussion from the Commission on this issue? Any other  
15 technical update?

16          I'm going to just rearrange the agenda and take  
17 the general call to the public now. We have some  
18 comments. And Mr. Vannais, whoever is first.

19          MR. VANNAIS: Leon Vannais, Tierra Dynamic.

20          I just wanted to say that I've personally seen a  
21 great improvement in both the SAF and Corrective Action  
22 Sections. Unfortunately, in any process, we have  
23 improvements somewhere, then other issues come to the  
24 front, which may or may not be addressed.

25          But concerning the SAF's involvement in the

1 technical decisions and the Technical Subcommittee  
2 meetings specifically, I just want to provide you three  
3 examples of the problems that we're seeing.

4           We're seeing disconnect between UST Corrective  
5 Action Section and SAF. We're seeing the UST Corrective  
6 Action Section work plan improving activities, and then  
7 the response comes in the determination saying that SAF  
8 cannot make sense of the UST's technical determination,  
9 therefore, all activities are denied, which is  
10 problematic, of course, for all involved.

11           I'm also seeing claims that are being submitted,  
12 and we're getting requests for information for lack of  
13 detail or additional supporting documentation, which we  
14 supply in full, but when a determination comes out, there  
15 are continuing denials that are very easily addressed that  
16 were never brought up previous -- in previous requests for  
17 information. And that seems to be not a full review being  
18 conducted at the time the information is being requested,  
19 but they are very simple things. You need time sheets or  
20 manhours on site for things, so it's not a complete AM  
21 process at this point, and there doesn't seem to be a  
22 technical manager of consistent review of these  
23 determinations coming out.

24           And then finally, of course, Tierra Dynamic deals  
25 with a lot of volunteers, and volunteers have to follow

1 mandatory preapproval rules at this point, so we have a  
2 number of preapproval work plans in process for  
3 remediation, and there are specific rules in existence for  
4 what a work plan does, how it needs to be presented from  
5 beginning of remediation to site closure, provide DEQ an  
6 opportunity to provide a list of technical deficiencies  
7 before they issue a determination. If the DEQ decides  
8 they don't like this remedial technology, please provide a  
9 comparison for the next one.

10           Those processes from the UST section, that  
11 doesn't seem like their staff is educated as to how that  
12 actually is supposed to go, because we're getting  
13 determinations that are inappropriate, that are cutting  
14 out contingencies, which is not supposed to be happening.  
15 We're getting determinations that are denying activities  
16 without the technical deficiency request being requested  
17 first so that those issues could be resolved outside of an  
18 informal appeal.

19           So, I understand there are new SAF rules being  
20 considered, but I'd like to ensure or encourage the  
21 department to educate their UST staff members on the  
22 proper process pursuant to existing rules, and that's all  
23 I have. Thank you.

24           CHAIRPERSON CLEMENT: Mr. Kelly?

25           MR. KELLY: Dan Kelly with Tierra Dynamic.

1           I'm reiterating Leon's point about really seeing  
2   incredible improvement in the SAF process, and I think the  
3   case in point to illustrate to Barbara, of all people, we  
4   appreciate it, we have no formal appeals or informal  
5   appeals on the docket as we speak, which, for the volume  
6   of claims we process, is very indicative of where we are  
7   at. Okay. You guys are making great headway, and I think  
8   it's very much owed to Phil and Joe and Hal, and the  
9   people that are making the decisions correcting this  
10  program.

11           This issue that Hal has been bringing up, though,  
12  about trying to bring the regulated committee and DEQ to  
13  the table and have some technology transfer both ways,  
14  there was great disappointment in, I think, Hal's -- there  
15  was great disappointment. I did a rough calculation, we  
16  were wasting a thousand dollars an hour of consulting time  
17  talking about the same problem we now have.

18           That being said, Phil, am I hearing correctly  
19  that your direction is that Joe's going to be the point  
20  man on technical issues going forward, that theoretically  
21  we don't need SAF sitting at the table, we're going to  
22  communicate with Joe and Joe's going to be responsible to  
23  take that and disseminate it to the masses?

24           MR. MC NEELY: That's the way it should have  
25  always been. SAF may be there. We've got Wayne Pudney

1 coming on board, but we should be seamless, and having SAF  
2 and Joe makes it not seamless. Technical people say it's  
3 reasonable and SAF is supposed to pay.

4 MR. KELLY: As usual, Phil, I'm your biggest  
5 supporter. I completely concur with that, but, beyond  
6 that, I really don't care. Just tell us how it works.  
7 That's all we want to know. And so with that being said,  
8 I think Joe is a great guy, besides the fact that he has  
9 more institutional memory than anybody in this room about  
10 this program. Besides that fact, which is a huge fact,  
11 Joe comes to the table with a very open mind and is very  
12 easy to work with, so I think from the regulated  
13 community, all we are looking for is somebody in the  
14 agency that's willing to say yes, we are going to listen  
15 to you or we are going to consider what you say. It  
16 doesn't mean that we are going to adopt what you say, but  
17 we are going to consider what you say, and what's  
18 valuable, we're going to incorporate into our process and  
19 try to make these problems go away prospectively.

20 So, Gail and Hal being one of the biggest  
21 complainers about our waste of time at the Technical  
22 Subcommittee meetings, I think we're getting this very  
23 clear direction, Joe is the point man, bring your issue to  
24 Joe and lay it out for Joe, and Joe is responsible for  
25 disseminating it to the mass. I think that's the best

1 deal we can come away from with this entire procedure.

2           We need to know -- just like you said, we walk  
3 in, we're preaching to the choir. Well, okay, now we know  
4 that the choir director over here can actually go back and  
5 talk to the congregation and disseminate a message to the  
6 congregation. That's where we were stumped. To be blunt,  
7 that's where we were stumped. We didn't see that seamless  
8 integration that you are talking about, so I think that  
9 seamless integration is just another manifestation of the  
10 management that you put in place which is manifesting  
11 itself is greatly reduced SAF claim appeal rate.

12           So, Hal and Gail, when you go back to your  
13 stakeholders and solicit about how we should pursue these  
14 meetings in the Technical Subcommittee, let's pursue them.  
15 We've got somebody to blame now. We can blame Joe for all  
16 of this, and he will pass it on to Al, I'm sure, a large  
17 portion of them, but, I would for one think we have a  
18 working model. Let's work with it. Let's move forward.

19           That being said, I think the two bigger things  
20 you need to consider before we forge on with the remedial  
21 system, remedial programs, technology transfer, and I  
22 missed Phil's comment on the SVE Rule, General Air Permit  
23 Rule, Special Waste Rule, but how are those programs being  
24 a communication back from the UST program? Is the UST  
25 program giving them a written response saying, for



1 example, Special Waste Rule, you can't exclude UST sites  
2 from the Special Waste Rule because UST Rules don't cover  
3 waste disposal transportation? How are they getting that  
4 message besides from me and my public comment?

5 MR. MC NEELY: No. I did talk to Peggy about  
6 these Special Waste Rules. I think there is a  
7 misunderstanding of what you are saying right now. We're  
8 not changing the way things are. I think just the wording  
9 was not as clear as you would like it, and I think they  
10 are going to work on the wording.

11 No, I didn't make any written comments. I just  
12 verbally talked to them and said, are we changing anything  
13 to update stuff, so -- no, but we are communicating.

14 MR. KELLY: When was the biggest years in the  
15 headline when we pointed out the direct language of the  
16 draft rules so --

17 CHAIRPERSON CLEMENT: I don't want to take  
18 everybody's time to go backwards on the agenda, so I  
19 appreciate your comment very much, Mr. Kelly, and unless  
20 we're on to a new public comment --

21 MR. KELLY: Will we be bringing these into the  
22 Technical Subcommittee for a recommendation of the Policy  
23 Commission on these things? Is there no direction from  
24 the Policy Commission on that? That was what my question  
25 was about.

1           CHAIRPERSON CLEMENT: I don't think we actually  
2 are at liberty to talk in detail about that. What we have  
3 done in the past is, if a rule was salient to the program  
4 that had specific issues that the Commission would be  
5 concerned about, we have provided formal comments on rule  
6 packages.

7           Based on what we've heard to date, nothing that,  
8 at least in my opinion and I'm not speaking for the  
9 Commission, would rise to that level, but we will continue  
10 to have updates. Individuals and the subcommittee can  
11 determine if it wants to participate in a more informal  
12 manner.

13           Mr. Gill?

14           MR. GILL: I understand. The one concern that  
15 came up with the Special Waste Rule was alleviated by  
16 Phil's comment. I will pass that on later on.

17           But I did -- but I did hear from a number of  
18 consultants there are real concerns with the general Air  
19 Rule. There is lots of changes and many of those are real  
20 problematic.

21           And so I had asked a number of consultants to  
22 give comments to me so I can, you know, submit them -- I  
23 don't know -- that's the problem with the rules. What's  
24 the time frame. If we have to -- if there are issues that  
25 need to be discussed and brought to the Commission for a

1 letter passing that on forward to the department, then we  
2 need to look at a time frame to do that.

3 CHAIRPERSON CLEMENT: I would make a motion to  
4 the Commission today that we empower the Technical  
5 Committee to hold whatever subcommittee meetings would be  
6 necessary to capture any issues that would be relevant to  
7 the UST program relative to the rule packages that are in  
8 other programs right now.

9 And I don't know, do we need a formal vote on  
10 that or can we get a consensus concurrence here?

11 So I make a motion that we empower the Technical  
12 Subcommittee to watch and provide comment and an  
13 opportunity for discussion in the Technical Subcommittees  
14 on the new rule packages that will be released by the  
15 agency, including the General Permit Air Rule for SEV, the  
16 Special Waste Rule, and I believe there was a third one on  
17 there, the Soil Remediation Level Rule.

18 MR. O'HARA: I will second that motion.

19 CHAIRPERSON CLEMENT: All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON CLEMENT: Anyone opposed?

22 The motion passes. Okay. Good.

23 MR. GILL: I will put it on an agenda for the  
24 next meeting to bring comments.

25 CHAIRPERSON CLEMENT: Just stay on top of it.

1           Mr. McNeely?

2           MR. MC NEELY:   Hal, they can forward comments  
3   straight to me, e-mail them straight to me because I will  
4   look into it immediately.   We won't have to wait for the  
5   meeting.

6           CHAIRPERSON CLEMENT:   Good.

7           Any other discussion items, any other points of  
8   business?

9           Any other comments from the general public?

10          Okay.   Let's go back to our agenda.

11          Summary of meeting action items.   I think the  
12   primary one I had was that the Technical Subcommittee is  
13   going to look into whether they want to and will have a  
14   risk assessment modeling interactive session.   Also now  
15   we've just mandated or given them the responsibility for  
16   following the new rule packages of proposed rules.

17          The third agenda item I had was to work with the  
18   Financial Subcommittee on response to Director Owens'  
19   letter regarding insurance, and I did not have any other  
20   action items I captured.

21          Were there any others from the Commission?   Okay.

22          Agendas items for next Commission meeting?   I  
23   would propose that we do not have the December 28, 2005  
24   meeting.   I think it's going to be hard to get a quorum,  
25   and I just don't think there is enough in front of the

1 Commission right now that warrants getting everybody in  
2 over that holiday week. So, I think our next meeting will  
3 be in January. We don't have a January schedule out yet  
4 but we will get that out. Maybe Mr. Johnson can work on  
5 getting that out to the Commission and the regulated  
6 community through your website and then we'll post that,  
7 and our first meeting I believe will be the last Wednesday  
8 of the month of January --

9 MR. JOHNSON: Yeah.

10 CHAIRPERSON CLEMENT: -- which I don't have a  
11 calendar even. Sorry. We will get a notice out in enough  
12 time, and that should be a pretty substantive meeting. We  
13 will have enough on the books to make it worthwhile for  
14 people.

15 Anything else? Okay. Do I have a motion to  
16 adjourn? I don't need that anymore.

17 With that in mind, the November 16th, 2005 UST  
18 Policy Commission meeting is adjourned. Thank you for  
19 your attendance.

20 (10:01 a.m.)

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I HEREBY CERTIFY that the proceedings had upon the foregoing hearing are contained in the shorthand record made by me thereof and that the foregoing 45 pages constitute a full true and correct transcript of said shorthand record all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 16th day of November, 2005.

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Deborah J. Worsley Girard  
Certified Reporter  
Certificate No. 50477